IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1616 of 1985
with
CROSS OBJECTIONS

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PATEL RAJABHAI BAVABHAI

Appearance:

1. First Appeal No. 1616 of 1985
MR MD PANDYA for Petitioner No. 1
MR PM RAVAL for Respondent No. 1-6
NOTICE SERVED for Respondent No. 7-10
MR PV NANAVATI for Respondent No. 11

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE M.S.SHAH

Date of decision: 01/05/2003

CAV JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

The present appeal and cross objections are directed against the judgment and award dated 8.10.1984 rendered by the Motor Accident Claims Tribunal (Aux.), Junagadh in MACP No. 330 of 1982 whereby the Tribunal awarded a sum of Rs.4,55,000/- to the claimants as compensation for death of Dr Prabhudas Patel, son of original claimant Nos. 1 and 2, husband of claimant No. 3 and father of minor claimant Nos. 4 and 5. The said death took place on account of the injuries caused by an accident involving a bus owned by Gujarat Road Transport Corporation and run by its driver Kara Laxman and an auto-rickshaw owned by original opponent No. 5-Gulammohmedkhan Abdulkhan and driven by original opponent No.4-Ashwinkumar Vasantrai Joshi. The Tribunal held that the aforesaid four opponents were jointly and severally liable to pay the aforesaid award amount with running interest at the rate of 6% p.a. from the date of the petition till realization with proportionate costs thereon. The claim petition against opponent Nos. 3 and 7 was dismissed. Opponent No. 3 was also a rickshaw driver. Opponent No. 7-United India Insurance Company Ltd. was the insurer for the auto-rickshaw.

The Tribunal awarded Rs.75,000/- to the parents of the deceased and awarded Rs.1,25,000/- each to the widow and to the two minor daughters of the deceased. The widow was aged 28 years at the time of filing the claim petition. The elder daughter was aged 4 years and the younger daughter was aged 15 months at the time of filing the claim petition.

2. The Gujarat State Road Transport Corporation has challenged the award questioning both the finding of the Tribunal about negligence of the bus driver and also the finding on the quantum of compensation. The original claimants have filed cross objections for enhancement of the compensation amount and also for higher rate of interest. It appears that during pendency of the appeal, Rajabhai Patel, original claimant No.1, father of deceased Dr Prabhudas Patel expired on 17.8.1989.

3. The facts leading to filing of the present appeal and cross objections are as under :-

3.1 On 27.9.1982, deceased Dr Prabhudas Patel alongwith his friend Dr Vipul Sangani had gone from their village Ranpur to Junagadh. They were going from Junagadh Station Darwaja to Gokulnagar in an auto-rickshaw bearing No. GTW 552 which was being driven

by original opponent No. 4 and was owned by original opponent No. 5 and insured with opponent No. 7. When the rickshaw reached about 100 ft. away to the South of Wanthali Darwaja traffic point on Jaishree talkies road, ST bus bearing No. GRT 7909 driven by opponent No. 2 came from the opposite direction. The claimants' case was that the ST driver drove his bus in a rash and negligent manner and at an excessive speed with the result that he lost control over the bus and the bus went on the wrong side of the road and consequently dashed against the rickshaw with the result that Dr Prabhudas Patel sustained fatal injuries and he succumbed to those injuries on the spot. Dr Vipul Sangani also sustained injuries and, therefore, he filed claim petition being MACP No. 34 of 1983. We are not concerned with the said claim petition in the present appeal. The parents, 28 years old widow-Ramaben and two minor daughters of the deceased and Ramaben, aged 4 years and 15 months filed MACP No. 330 of 1982 claiming Rs.10,00,000/- by way of compensation from the driver and owner of the ST bus and from the driver, owner and insurer of the auto-rickshaw.

3.2 The opponents appeared and resisted the claim petition. As far as the Insurance Company of the auto-rickshaw is concerned, it contended that the policy of the auto-rickshaw was an Act policy and the liability of the Insurance company was limited to Rs.5,000/-. It also contended that the driver of the auto-rickshaw was not duly licensed and in fact opponent No. 4 was not holding any license and was not qualified to drive the auto-rickshaw. Hence, it was not liable to pay any amount of compensation to the claimants.

3.3 The evidence of the claimants i.e. widow of deceased Dr Prabhudas Patel and co-passenger Dr Vipul Sangani was recorded on 24.8.1984. On the same day, the claimants filed a purshis (Exh.47) reducing their claim from Rs. 10,00,000/- to Rs. 5,00,000/-. The evidence of the bus driver was recorded on 31.8.1984 and the evidence of the rickshaw owner and the rickshaw driver was recorded on 4.9.1984. By judgment and award dated 8.10.1984, the Tribunal passed an award for Rs.4,55,000/- as aforesaid after holding that the deceased was a doctor who had passed his MBBS examination and was doing internship and that even if he had not prosecuted his further studies, the deceased would have earned atleast Rs.3,000/- per month. After deducting Rs.500/- for personal expenses of the deceased, the dependency benefit was determined at Rs.2,500/- per month. Since the deceased was 32 years of age, 15 years multiplier was applied and the loss of dependency benefit was

accordingly worked out to Rs.2,500 x 12 x 15 = Rs.4,50,000/-. Rs.5,000/- was added as damages for loss of expectation of life and thus a total amount of Rs.4,55,000/- was awarded. While the ST Corporation has filed an appeal for challenging the award, the claimants have filed cross objections for enhancement of the compensation amount to Rs.10,00,000/-.

4. At the hearing of the appeal and cross objections, Mr MD Pandya for the appellant-ST Corporation has challenged the finding of the Tribunal on the question of negligence. However, on a perusal of the FIR at Exh. 54, panchnama of the place of accident at Exh. 55, post-mortem note at Exh. 53 and the deposition of the bus driver as well as the rickshaw driver and also the deposition of co-passenger Dr Vipul Sangani, it is clear that accident of such magnitude causing death of deceased Dr Prabhudas Patel on the spot could not have taken place in the city without some negligence on the part of the bus driver. The Tribunal has found both the bus driver and the rickshaw driver to be guilty of rash and negligent driving and, therefore, responsible for the accident which caused the death of Dr Prabhudas Patel on the spot. We, therefore, see no reason to disturb that finding of the Tribunal. The rickshaw driver or the rickshaw owner have not filed any appeal or cross objections and, therefore, we are not required to go into the question about apportionment of the liability between the bus driver and the rickshaw driver for their composite negligence as that question is not raised in the appeal of the ST Corporation.

In any case, the claimants are entitled to claim compensation from the joint tort-feasors and for deciding the cross objections also, we are not required to go into the question of apportionment of the liability between the bus driver and the rickshaw driver.

5. Mr Pandya, learned counsel for the ST Corporation has, however, urged that the award is also required to be passed against the Insurance Company of the auto-rickshaw. In view of the decision of the Hon'ble Supreme Court in United India Insurance Co. Ltd. vs. Lehru & Ors., JT 2003 (2) SC 595, Mr Pandya has submitted that even if the auto-rickshaw did not hold any license, the Insurance Company of original opponent No. 7 would be liable to satisfy the award against the auto-rickshaw owner i.e. opponent No. 4 who is already held to be liable as per the award of the Tribunal also.

Mr PV Nanavati, learned counsel for original

opponent No. 7-Insurance Company has on the other hand submitted that in the said decision, the controversy was whether the driving license of the driver was genuine or fake and it was in the context of the said controversy that the Apex Court has held that in order to avoid liability, it is not sufficient to show that the person driving at the time of accident was not duly licensed and that the Insurance Company must establish that the breach was on the part of the insured. Where the owner has satisfied himself that the driver had a licence and is driving competently there would be no breach and the Insurance Company would not then be absolved of its liability. Only where the Insurance Company proves that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive, then the Insurance Company would be absolved of its liability. Mr Nanavati further submitted that neither the claimants nor the ST Corporation have challenged in their cross objections or the appeal the finding of the Tribunal that opponent No.7-Insurance Company was not liable to satisfy the award and, therefore also, the controversy cannot be reopened.

Having heard the learned counsel for the parties, and in view of the fact that neither the claimants nor the ST Corporation have challenged the finding of the Tribunal that opponent No. 7-Insurance Company is not liable and since the question about liability of the Insurance Company would involve examination of facts, we are not inclined to go into the question which is obviously raised for the first time at the hearing of the appeal.

6. Coming to the question of quantum, considering the fact that the deceased was a doctor who had passed his MBBS examination and was doing internship and was granted certificate of provisional registration by the Gujarat Medical Council, Ahmedabad on 15.12.1981 for the purpose of employment in a medical capacity at the approved institution, it cannot be said that the compensation of Rs.4,55,000/- awarded by the Tribunal to the claimants is required to be reduced. The real and serious controversy is whether the claimants are entitled to be awarded any higher amount than the amount awarded by the Tribunal.

7. At the outset, Mr Pandya, learned counsel for the ST Corporation has submitted that although the claimants had originally filed their claim petition for a sum of Rs.10,00,000/-, the claim was reduced by purshis (Exh. 47) to Rs.5,00,000/- and, therefore, it is not open to

the claimants to claim any amount in excess of Rs.5,00,000/-. Since the Tribunal has already awarded Rs.4,55,000/-, the cross objections must be decided with respect to the compensation amount of Rs.45,000/- not awarded by the Tribunal and nothing more can be awarded to the claimants.

8. On the other hand, Mr Harin Raval, learned counsel for the claimants has vehemently urged that the claim amount was reduced from Rs.10,00,000/- to Rs.5,00,000/- on account of the agreement between the claimants and the learned advocate appearing for the ST Corporation before the Tribunal that the compensation be awarded to the tune of Rs.4,55,000/- alongwith interest at 6% p.a. and that the ST Corporation would not prefer any appeal against such award. It was in that view of the matter that the claimants had reduced the claim from Rs.10,00,000/- to Rs.5,00,000/- by purshis (Exh.47) which was given on 24.8.1984 and thereafter the evidence of the claimants was led so as to justify the claim of Rs.5,00,000/- only, otherwise the claimants would have led evidence justifying compensation of Rs.10,00,000/-. It is, therefore, submitted by Mr Raval that since the ST Corporation has resiled from that agreement and challenged the award by filing the present appeal, the claimants also are at liberty to claim higher amount and, therefore, they have filed the cross objections which are required to be heard and decided on merits without being fettered by purshis Exh.47 which was a part of the settlement from which the ST Corporation has resiled and, therefore, the claimants cannot be tied down to the said purshis. Mr Raval has also prayed that the cross objections with the oral request for enhancing the claim to Rs.10 lakhs may be treated an application for amendment.

It is submitted that in any view of the matter, the claimants are entitled to be awarded JUST compensation for the death of Dr Prabhudas Patel caused by the rash and negligent driving of the bus and auto-rickshaw by the respondent-original opponents irrespective of the amount claimed before the Tribunal. The learned counsel has also placed reliance on the decision of the Supreme Court in Nagappa vs. Gurudayal Singh, (2003) 2 SCC 274.

9. We have heard the learned counsel for the parties on this controversy. We have also perused the original record of the claim petition. Exh. 47 was signed by the learned advocate for the original claimants on 24.8.1984 i.e. the date on which the evidence of the claimants was

recorded and the same read, as translated in English, as under :-

"The claimants herein respectfully submit as under :-

Today this case is fixed for hearing.
Taking into consideration the circumstances of the case, we are ready to reduce our claim amount voluntarily and are prepared to accept the amount of compensation of Rs.5,00,000/- with interest at 6% p.a. from the date of claim and with proportionate costs, which we hereby declare.

Sd/- Advocate for the claimants "

The tenor of the purshis, therefore, clearly indicates that the claimants were not reducing the claim amount simpliciter and that there was an implied agreement that the claimants would be awarded an amount in the region of, but less than Rs.5,00,000/- and that the claimants were willing to accept such award. The oral evidence of the claimants i.e. the widow of the deceased and co-passenger was thereafter recorded on the same day i.e. 24.8.1984 and the widow's evidence regarding income was also given so as to justify the claim for compensation of about Rs.5 lakhs.

The aforesaid submission made by the learned counsel for the original claimants is not a mere afterthought but is also to be found in the cross objections filed by the claimants as far back as on 4.4.1986. Hence, we are inclined to accept the explanation offered by the claimants in the memo of cross objections for reducing the claim before the Tribunal.

10. The learned counsel for the ST Corporation has, of course, objected to any such explanation being taken into consideration as the cross objections are not supported by any affidavit. This controversy, however, need not detain us further because in Nagappa vs. Gurudayal Singh, (2003) 2 SCC 274, the Hon'ble Supreme Court has held that the duty of the Tribunal is to award JUST compensation and that such compensation may even exceed the amount claimed by the claimants.

In the said case, the claimant suffered injuries in an accident which took place in the year 1985. The claimant had filed claim petition for compensation of Rs.1 lakh. The Tribunal awarded Rs.30,000/- as

compensation. In appeal, the High Court enhanced the compensation of Rs.1 lakh. In the claimant's appeal before the Supreme Court, permission was sought to amend the claim petition for enhancing the claim to Rs.5 lakhs. The Insurance Company opposed that application. After considering the statutory provisions and the decisions of various High Courts including the decision of the Bombay High Court in Municipal Corporation of Greater Bombay vs. Kisan Gangaram Hire, 1987 ACJ 311 (Bom.) and the decision of a Full Bench of this Court in Urmila J. Sangani (Dr) vs. Pragjibhai Mohanlal Luvana, AIR 2000 Guj. 211 (FB), the Apex Court held that in the Motor Vehicles Act, there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "JUST" compensation on the basis of the evidence produced on record.

It is true that the aforesaid decision was rendered under the Motor Vehicles Act, 1998, but the Court has quoted with approval the principle on the aforesaid line laid down in Municipal Corporation of Greater Bombay (Supra) which was rendered under Section 110-B of the Motor Vehicles Act, 1939 which also contained a similar provision. Hence, we apply the same principle in the facts of the instant case also.

In view of the aforesaid judgment, we accept the the prayer made on behalf of the claimants for considering the case for enhancement of the compensation amount to Rs.10 lakhs as originally claimed and accordingly we examine the matter on merits.

11. The learned counsel for the claimants has submitted that the deceased was aged 32 years at the time of the accident. He was a doctor with the qualification of MBBS and was doing internship. Even if he had not done any postgraduate studies, he would have either done private practice or gone for government service. The learned counsel has relied on the pay-scales for Medical Officers Class-II in State Government service in the Health and Family Welfare Department as provided in the Gujarat Civil Services (Revision of Pay) Rules, 1987 and as contained in the Gujarat Civil Services (Revision of Pay) Rule, 1998. It is submitted that pay-scale for a medical officer in the Health Department was Rs.2000-3500 with effect from 1.1.1986 alongwith dearness allowance and other allowances and that the scale was further revised to Rs.6500-10500 with effect from 1.1.1996. It is, therefore, submitted that in view of the said pay-scales, the future income of the deceased was required to be assessed atleast at Rs.10,000/- and the

claimants would have got dependency benefit to the tune of atleast Rs.8,000/- per month.

It is further submitted that Ramaben, widow of the deceased, had also stated in her oral evidence that the deceased was looking after the agricultural lands of the deceased and was getting Rs.1,000/- per month and, therefore, the said income should also be taken into consideration. Reliance is also placed on the documentary evidence showing that the deceased owned agricultural land which was being cultivated.

12. On the other hand, Mr Pandya, learned counsel for the ST Corporation has submitted that the Tribunal having proceeded on the basis of the case of the claimants themselves that the deceased would have earned monthly income of Rs.3,000/- and would have contributed Rs.2,500/- to the family, full compensation has been awarded by the Tribunal and nothing further is required to be awarded as regards loss of income as a doctor. As regards the agricultural income, it is submitted that the land in question is of the ownership of the deceased and his brothers and father and that the other co-owners have continued their agricultural operations and, therefore, there has been no loss of agricultural income on account of the death of the deceased.

13. Having heard the learned counsel for the parties, we find considerable substance in the submission of the learned counsel for the original claimants. There is no dispute about the fact that the deceased was possessing the qualification of MBBS and was doing internship. Upon completion of the internship, even if the deceased had not pursued postgraduate studies, the deceased would have either started private practice or would have joined government service as a medical officer which is Class-II service to start with. It is true that the accident took place in the year 1983 and the pay-scales in question came into force with effect from 1.1.1986 (Rs.2000-3500) and with effect from 1.1.1996 (Rs.6500-10500). However, since the Revision of Pay Rules relied upon by the claimants are statutory rules published in the Gujarat Government gazettes, we find no reason not to take the said Rules into consideration. The deceased was aged only 32 years and, therefore, he would have practiced or been in government service for atleast next 26 to 30 years. The compensation is to be awarded for loss of dependency benefit, but although the compensation has to be computed after considering the income at the time of deciding the claim petition, the Court is also required to make an estimate of the income which the deceased

would have earned in future.

14. It is required to be noted that the pay-scales only provide for basic salary and the government officer is also paid dearness allowance and other allowances. Hence, the salary as mentioned in the pay-scale of Rs.2000-3500 would be only the basic pay to which such allowances would have to be added. In the circumstances, Rs.3,000/= would have been the starting salary for a medical officer from 1986 onwards and it would be about Rs.12,000/- when the officer would reach the maximum of the scale. In the meantime, the pay-scales were revised with effect from 1.1.1996. Hence, averaging the salary of a medical officer between Rs.3,000/- in 1983 and Rs.12,000/- in 1996, the monthly income would come to Rs.7,500/- per month. Deducting Rs.2,500/- for personal expenses, the dependency benefit would come to Rs.5,000/= per month. Hence, the yearly loss of dependency benefit would be Rs.60,000/-. Since the deceased was aged only 32 years at the time of the accident, the multiplier of 15 years would be just and reasonable. Accordingly, the loss of dependency benefit would come to Rs.9,00,000/-.

15. Coming to the loss of agricultural income, the documents at Exhs. 49 and 50 show that the deceased alongwith two other brothers owned agricultural land admeasuring 12 Acres and that groundnut, wheat and garlic were being cultivated. The land also had irrigation facility of a well. Mr Pandya for the ST Corporation has seriously challenged the claim of the widow that the deceased was getting income of Rs.1000/- per month from the agricultural operations and has submitted that no document is produced in support of such claim and has further submitted that if the deceased were to practice as a doctor, he would never be able to render any supervision over agricultural activities.

16. The Tribunal had not at all considered this part of the claimants' case and, therefore, it is not possible to find out as to why the Tribunal has chosen not to award any compensation under the head of loss of agricultural income.

It is required to be noted that the land in question is only 12 Acres and two brothers of the deceased are also co-owners of the land in question. Considering the fact that the deceased was a doctor and the extent of agricultural holding was not very much, it is not possible to accept the claimants' case that the deceased was earning Rs.1,000/- per month as agricultural income from any supervisory service rendered by the

deceased. Even if the deceased had not met with the accident in question, if he were to join government service which is the basis for computing the compensation for loss of income as aforesaid, the deceased would have been transferred from one place to another and therefore, the deceased could not have rendered any supervisory service. Hence, we do not award any compensation on this score.

17. As regards the rate of interest to be awarded for the compensation already awarded by the Tribunal, the period in question would be just about two years and, therefore, we are not inclined to modify the rate of interest for that period, but for the enhanced amount being awarded by this judgment, we are of the view that the interests of justice would be served if the interest is awarded at the rate of 9% p.a. from the date of filing the cross objections before this Court i.e. from 4.4.1986 till the date of payment or realization.

18. Accordingly, the claimants are entitled to get the following amounts as compensation :-

Rs.9,00,000/-	Compensation for loss of dependency benefit.
Rs. 10,000/-	compensation for loss of expectation of life as loss to the estate as already awarded by the Tribunal.

Rs.9,10,000/-	
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Since the Tribunal has already awarded Rs.4,55,000/-, original opponent Nos. 1, 2, 4 and 5 shall pay a further amount of Rs.4,55,000/- to the original claimants-respondent Nos. 2, 3, 4 and 5 in First Appeal No. 1616 of 1985 alongwith interest at the rate of 9% p.a. from the date of filing of the cross objections i.e. 4.4.1986 till the date of payment with proportionate costs thereon.

The amount shall be apportioned between the claimants as under :-

Mother of the deceased - 10%
Widow of the deceased - 70%

Elder daughter - 10%
Younger daughter - 10%
100%

Out of the amount to be deposited by the ST Corporation in compliance with this judgment, 10% of the amounts payable to each of the claimants as per this judgment shall be paid by separate account payee cheques in favour of the respective claimants and the rest of the amounts shall be invested in separate Fixed Deposit Receipts in the name of the concerned claimants for a period of three years and the periodical interest accruing thereon shall be regularly paid to the respective claimants. The claimants shall not be permitted to prematurely encash the Fixed Deposit Receipts or to encumber the same without prior permission of the Motor Accident Claims Tribunal, Junagadh.

19. First Appeal No. 1616 of 1985 is accordingly dismissed with costs. The cross objections in the said First Appeal are allowed to the aforesaid extent with proportionate costs for this appeal. The original opponents before the Tribunal shall bear their own costs throughout.

(N.G. Nandi, J.)

(M.S. Shah, J.)
sundar/-